LOO EAN HOOI

v.

ISMAIL SALLEH & ANOR.

HIGH COURT MALAYA, PENANG
MUSTAPHA HUSSAIN JC
[CIVIL SUIT NO. 120 OF 1980]
31 DECEMBER 1981

TORT: *Damages - Negligence - Whether it is incumbent for road users travelling along main road to slow down at every junction - Whether motorist who shoots out from "STOP" sign across main road wholly liable for accident - Plaintiff fisherman - Question of working age.*

This was a claim for damages arising out of a motor accident on 31December 1978 in which the plaintiff suffered injuries and loss.

The accident occurred at the junction of Kelawai/Cantonment Road, Penang involving the plaintiff who was riding a motor cycle No. PU 5773 along the main road known as Kelawai Road. The 1st defendant as the servant/agent of the 2nd defendant was driving a motor car No. WH 793 along Cantonment Road and crossed Kelawai Road which caused the collision.

Plaintiff's Loss of Earning:

Plaintiff aged 43 years was a fisherman before the accident. He earned an income of RM450 per month. He was unemployed for 13 months due to injuries sustained in the accident. Actual loss of earning was RM5,850.

Loss of Earning Capacity:

Plaintiff after the accident assisted other fishermen at the shores and earned about RM70 to RM80 per month. He was unable to go out to sea. Loss of earning capacity was assessed at RM300 per month. Evidence was adduced by the plaintiff's partner that a fisherman could work up to 60-70 years of age, and this was not challenged.

Finding Of Court as to Quantum

(i) Plaintiff's working age - 60 years, remaining working age - 16 years (less 13 months taken into account for actual loss of earning). 5 years was deducted for contingency leaving 11 years at RM300 per month which the Actuarial Tables gives RM29,903.

(ii) Parties on the onset of the trial had agreed to General damages (pain & suffering) at RM40,000 with 6% interest p.a. from date of service to date of satisfaction of judgment.

Special damages agreed at RM700 with 3% interest from date of accident to date of satisfaction of judgment.

Held:

[1] It was quite clear that if the first defendant had kept a proper look-out he would have seen the plaintiff as he readily admitted.

[2] On the balance of probability the plaintiff has proved that it was the first defendant who had not stopped and had taken the risks of "shooting" across the main road.

[3] The first defendant was wholly liable for the accident that occurred.

[Claim allowed. Costs to be agreed or taxed.]

Case referred to:
Murtadza bin Mohamed Hassan v. Chong Swee Pian [1980] 1 MLJ 216

For the plaintiff - K. Kumaraendran
For the defendants - Abdul Hamid bin Said

(Digest Form Only)

Also found at [1982] CLJ 161